INDEX TO MISCELLANEOUS ISSUES

Page

X. MISCELLANEOUS

Only one Miscellaneous issue remains for Commission resolution: what contract language should the WorldCom/Verizon VA interconnection agreement include to memorialize the parties' rights and obligations with respect to the exchange of certain types of information services traffic? The dispute between Verizon VA and WorldCom is whether the interconnection agreement should (i) contain Verizon VA's currently proposed contract language or (ii) remain silent. Throughout the course of its negotiations with WorldCom, Verizon VA has attempted to balance WorldCom's expressed concerns about addressing information services traffic at all, and its affiliates' concerns in other jurisdictions, with Verizon VA's need to ensure that it is not put in the unreasonable position of bearing the financial risk of uncollectable revenue owed by an interconnecting CLEC's end-user. The inability to collect revenue from an end-user is a risk associated with providing retail telephone services, and when an interconnecting CLEC has the relationship with the retail end-user, it should have the risk.

Issue VI-1(AA) **Information Services Traffic**

Verizon VA **To the extent that WorldCom has failed to raise a dispute regarding a provision in Verizon's proposed interconnection agreement, should the Commission order inclusion of that language in the resulting interconnection agreement? --Information Services Traffic.**

A. OVERVIEW

At the present time, neither Party offers the types of information services at issue here (such as recorded time or weather information) on its network platform. Nevertheless, the agreement that results from this arbitration could be adopted for use in a state where the type of information services traffic addressed in Verizon VA's proposed contract language is an issue. Alternatively, the services that result in such traffic might be permitted in Virginia in the future. Accordingly, in those circumstances, Verizon VA's proposal reasonably provides Verizon with the opportunity to address a fair allocation of the financial risk of uncollectable revenue owed by an interconnecting CLEC's end-user. WorldCom offers no alternative language nor any compelling reason to reject Verizon VA's proposed language. Accordingly, Verizon VA's proposed contract language should be included in its interconnection agreement with WorldCom.

B. DISCUSSION

As explained in Verizon VA's Answer to WorldCom's Petition for Arbitration, Verizon VA provided WorldCom its model interconnection agreement to use as a starting point for negotiations in March 2000. Contained within that model interconnection agreement was Section 5 of the Additional Services Attachment, which represented Verizon VA's original proposal to address the parties' respective responsibilities regarding the terms and conditions for the exchange of information services traffic. *See* Exhibit C-1 to Verizon VA's Answer, § 5 of the Additional Services Attachment. WorldCom (i) rejected use of Verizon VA's model interconnection agreement, (ii) failed to specifically comment on Verizon VA's proposal regarding information services traffic, and (iii) failed to offer any competing contract language. When WorldCom filed its Petition for Arbitration, it did not identify as an open issue in dispute Verizon VA's proposal with respect to information services traffic. Because of WorldCom's failure to identify or articulate a dispute with Verizon VA's proposal regarding information service traffic, the Commission should order its inclusion in the interconnection agreement that results from this arbitration. *See* Verizon VA's Answer at 4, 9-13 and Verizon VA's Supplemental Statement of Unresolved Issues, which is Exhibit BC-1 to Verizon VA's Answer at 3-4, 16-17.

Notwithstanding WorldCom's failure to identify or articulate a dispute with Verizon VA's information service traffic proposal prior to filing its Petition for Arbitration, WorldCom's Response to Verizon's Supplemental Issues cited only two reasons for opposing Verizon VA's proposal. First, WorldCom was concerned about whether the "Voice Information Services Traffic" discussed in Verizon VA's proposed language should be exempted from reciprocal compensation. Second, WorldCom objected to Verizon VA's proposal that WorldCom should bear the risk that WorldCom's end-user might not pay the charges associated with the services that are provided in connection with information services traffic. *See* WorldCom's Response to Verizon's Supplemental Issues at 56-58. Verizon VA and WorldCom agreed to submit this issue to mediation, but were unable to reach a mutually acceptable resolution. After mediation, WorldCom's testimony cited the same two concerns as its Response to Verizon's Supplemental Issues. *See* WorldCom Exhibit 8 at 44 and WorldCom Exhibit 24 at 29.

In response to WorldCom's concern about the applicability of reciprocal compensation, Verizon VA clarified that its proposed contract language addressing reciprocal compensation obligations in light of the Commission's *ISP Remand Order* was explained in connection with the Intercarrier Compensation issues. In addition, Verizon VA's witnesses on the Miscellaneous Panel explained why it is not fair to require Verizon VA to continue to bear the risk of uncollectable revenue from a WorldCom end-user for services that are provided to that end-user in connection with information services traffic. *See* Verizon VA Exhibit 12 at 6 and Verizon VA Exhibit 29 at 1.

Specifically, Verizon VA's Miscellaneous Panel witnesses acknowledged that the need to address the issue would vary from state to state depending on the services offered or allowed in that state. Nevertheless, to the extent that a Verizon company has performed a billing and collection function for third party providers, it usually has done so as a result of terms required by a state commission in a Verizon company's tariff. Although WorldCom witness Argenbright, WorldCom Exhibit 8 at 45, complained that it would not be proper or fair for Verizon to "force WorldCom to guarantee that the end-users will render payment," it is less proper or fair to expect Verizon to guaranty payments by WorldCom's end users when it no longer has the relationship with the end-user. Generally, to balance the risk of the uncollectable charges, state commissions provide the manner and means by which the service provider can terminate or block services to end-users. Nevertheless, because no information services are currently offered in Virginia, state regulators in Virginia have not been presented an opportunity to do so. If, and when, information services are offered, it will be up to the Virginia Commission to address the environment in which a variety of competitors may serve the end-user. As such, Verizon VA has offered specific contract language that recognizes this possible future action.

C. CONTRACT PROPOSALS

As noted above, at the present time, neither Party offers information services of the type at issue here on its network platform. Tr. at 1983-84. Nonetheless, the agreement that results from this arbitration could be adopted for use in a state where the information services traffic addressed in Verizon VA's proposed contract language is an issue. Tr. at 1484-85. In addition, such traffic might be permitted in Virginia in the future. Verizon VA proposes contract language that will reasonably provide Verizon with the opportunity to address a fair allocation of the financial risk of uncollectable revenue owed by an interconnecting CLEC's end-user if and when traffic associated with information services becomes an issue before the state commission.

To balance WorldCom's expressed concerns about addressing information services traffic at all with Verizon VA's need to ensure that it is not put in the unreasonable position of bearing the financial risk of uncollectable revenue owed by an interconnecting CLEC's end-user, Verizon VA currently proposes more simplified contract terms than those originally set forth in § 5 of the Additional Services Attachment, at Exhibit C-1 to Verizon VA's Answer. As set forth in Verizon VA Exhibit 57, Verizon VA proposes:

> For purposes of this Agreement, information services and Information Services Traffic refer to switched voice traffic, delivered to information service providers who offer recorded voice announcement information or open vocal discussion programs to the general public. Information Services Traffic does not include Internet Traffic. Information Services Traffic also does not include 555 traffic or similar traffic with AIN service interfaces, which traffic shall be subject to separate arrangements between the Parties.
>
> At the present time, neither Party offers information services on its network platform. The Parties agree to negotiate additional terms and rates and conditions as necessary to permit mutual interconnection to Information Services offered on either Party's network platform in the event that such Information Services are made available. Such negotiations shall commence promptly upon request of either Party and, if the Parties are unable to reach agreement within thirty (30) days of such request, either Party may submit the matter to the expedited Dispute Resolution process set forth in Section [__].

As explained by Verizon VA's Miscellaneous Panel witnesses, the Information Services Traffic addressed by Verizon VA's proposed contract language is "traffic to specific exchanges, 976, 915 in particular in this area. Information service providers are customers who provide recorded information like time and weather, dial-a-date, those types of services or what we classify as information services traffic." Tr. at 1995.

Verizon VA's current proposal does not raise WorldCom's concern regarding the applicability of reciprocal compensation. Further, Verizon VA's current proposal does not raise WorldCom's concern regarding allocation of the risk of uncollectable revenue. Rather, Verizon VA's proposal ensures that the agreement is not silent and, if and when information services are made available, the parties to the agreement are obligated to negotiate their rights and obligations. While eliminating the basis for WorldCom's objections to Verizon VA's originally proposed language, Verizon VA now proposes language that recognizes the current environment in Virginia and limits the time period and circumstances in which Verizon VA could be faced with the financial risk of uncollectable revenue owed by an interconnecting CLEC's end-user.

WorldCom now claims that it objects to including Verizon VA's currently proposed language because it addresses an arrangement that is not properly the subject of an interconnection agreement. Tr. at 2001-02. Interestingly, WorldCom did not raise this objection to Verizon VA's originally proposed language, which addressed the arrangements for the information services traffic in much more detail than Verizon VA's current proposal. Moreover, as explained by Verizon VA's Miscellaneous Panel witnesses, in a state in which the subject traffic is permitted, the traffic is delivered to a Verizon service by WorldCom on behalf of a WorldCom end-user. Tr. at 2002. Verizon provides a method to block the subject traffic should WorldCom wish to limit its end-users' access. *Id.* Finally, Verizon has comparable contractual provisions in its interconnection agreements with WorldCom in other jurisdictions. *See* Verizon VA Exhibit 70 (with attachments A-E).

WorldCom offers no alternative language, proposing only to delete Verizon VA's proposed language. *See* Issue VI-1(AA), Second Revised Joint Decision Point List (Miscellaneous), which is Commission Exhibit 1. The only objections WorldCom offered to Verizon VA's proposed language are inapplicable or unpersuasive. Accordingly, Verizon VA's proposed contract language should be included in its interconnection agreement with WorldCom.

TABLE OF CONTENTS TO RIGHTS OF WAY ISSUES

XI. RIGHTS OF WAY

The Parties are in general agreement regarding the terms and conditions governing WorldCom's access to Verizon VA's poles, ducts, conduit and right of way. The only issues that remain unresolved are 1) whether those terms and conditions should be set forth in the interconnection agreement or, as is the practice with all others operating in Verizon VA's territory (including WorldCom affiliates), in a separate license agreement (Issue III-13); and one (or perhaps two) minor make-ready work issues (contained in Issue III-13(h)). In both cases, WorldCom is insisting on unique treatment for which there is no legitimate basis. Accordingly, the Commission should reject WorldCom's proposals and approved Verizon VA's proposed contract language and format.

<u>Issue III-13</u> Placement of Terms and Conditions Governing WorldCom's Access to Verizon VA's Poles, Ducts, Conduit and Rights of Way

WorldCom: Should the terms and conditions governing WorldCom's access to Verizon VA's poles, ducts, conduit and rights of way be contained in a separate licensing agreement or incorporated into the Parties' interconnection agreement?

A. OVERVIEW

The Parties disagree as to whether the terms and conditions governing WorldCom's access to poles, ducts, conduit and rights of way should be placed in a separate license agreement or in the Parties' interconnection agreement. Consistent with Verizon VA's practice with all other CLECs, telecommunications providers and CATV providers in Virginia, such terms and conditions should continue to be placed in a separate license agreement.

B. DISCUSSION

The Parties' interconnection agreement should not contain the specific terms and conditions addressing access to poles, ducts, conduit and rights of way. Contrary to WorldCom's claims, Verizon VA satisfies its obligations under the Act by including in the interconnection agreement a reference to the separate license agreement in which the specific terms and conditions governing non-discriminatory access are set forth in detail, and applicable to all parties who have access. There is no basis for special treatment for WorldCom.

Although the Parties' 1997 interconnection agreement included rights of way terms and conditions, WorldCom's affiliates in Virginia all operate under separate license agreements, as do all other CLECs, telecommunications providers and cable television providers, with the exception of AT&T (who has in this proceeding agreed to use the separate agreement). Accordingly, WorldCom's argument that the structure of the Act "mandates inclusion of these terms and conditions in the Interconnection Agreement" is belied by established practice.[1] WorldCom Ex. 27 at 3. Under the Act, it is sufficient if the Interconnection Agreement includes a reference to the separate agreement in which the terms and conditions are set forth.

It is, and has been, common practice to include interconnection terms in places other than the interconnection agreement. Interconnection terms and conditions obligating both ILECs and CLECs have been the subject of collaboratives and industry forums, and are contained in settlement agreements and separate license agreements. Numerous commissions have approved this practice in approving interconnection agreements that satisfy the Act by simply referencing separate agreements. In Virginia, for example, Verizon VA and WorldCom are parties to license agreements governing access to Verizon VA's Operator Services/Directory Assistance databases, including directory listings and branding. *See* Verizon VA Ex. 31 at 3.

Moreover, particularly because provisions for access to rights of way generally have state-specific operating procedures, a separate license agreement referenced in the interconnection agreement is especially appropriate for terms and conditions governing such access. For example, under Verizon New England's standard agreement, there is a limit of 200 poles per application, unit pricing is used to determine make-ready costs, reasonable efforts are made to complete make ready work in six months, and tri-party license agreements are formed with power companies. By contrast, under the agreement used in Virginia (as well as elsewhere in the Mid-Atlantic territory encompassing Washington D.C., New Jersey, Pennsylvania, Delaware, Maryland, Virginia and West Virginia), there is no pole limit per application, actual costs are used for billing for make-ready work, Verizon VA completes make ready work at parity

[1] It is noteworthy that WorldCom, in its examples of interconnection agreements that contain terms and conditions for rights of way, offers no Virginia agreement and no agreement with Verizon in any jurisdiction. *See, e.g.,* WorldCom Ex. 11 at 3.

with or better than it completes its own make ready work, and license agreements are formed only between Verizon VA and the attaching party. In addition, pole and conduit agreements are entered into separately in New England and New York. In Virginia, these are contained in one single agreement. In short, Verizon's standard agreements vary in their treatment of operating procedures, attachment fees, and pole limitations within a single Planning Manager Area. *See* Verizon VA Ex. 31 at 6. There are also several differences between the Virginia agreement and agreements used in New York and in the former GTE areas. *See id.* Given these differences, such terms and conditions should not be included in interconnection agreements that are subject to being adopted in other states.

Finally, the Commission must consider the respective burdens of the Parties. Verizon VA currently has 136 agreements with CATV companies and at least 48 agreements with CLECs, independent telecommunications companies and other telecommunications providers. *See* Verizon VA Ex. 31 at 5. Verizon VA has established processes in place to handle all requests for access to poles, ducts, conduit and rights of way from all of these companies. These processes have been administered by Verizon VA's Pole Conduit Licensing Center in Richmond, Virginia since 1998. *See id.* Verizon VA ensures that it provides non-discriminatory access because its relationships with all parties within the state are governed by the same rates, terms, and conditions. *Id.* If those terms and conditions were different, however, and included in each CLEC's separate interconnection agreement, it would be much more difficult to ensure that all were being treated fairly. Utilizing a separate agreement thus alleviates Verizon VA's administrative burden by not requiring it to keep track of different agreements and by not interfering with the current practice in Virginia. By contrast, WorldCom cannot claim to be burdened if the terms and conditions for access to rights of way are set forth in a separate agreement instead of the Interconnection Agreement.

C. CONTRACT PROPOSALS

Verizon VA's proposed license agreement may be found in its May 31st Answer, in Exhibit D. The Parties are in agreement as to virtually all of the agreement's terms and conditions, with the exception of make ready work described below.

Issue III-13(h) **Make Ready Work**

WorldCom: Should the Interconnection Agreement contain detailed provisions regarding Pre-License Survey and Make-Ready Work requirements and procedures?

A. OVERVIEW

This issue can be broken down into two parts. First, as stated at the hearing, WorldCom will accept Verizon VA's current practice of providing detailed information about make-ready work through e-mail or another written format when it presents WorldCom with the make-ready cost estimate. Thus, the first issue appears to be resolved. The second issue stems from WorldCom's demand that Verizon VA be required to employ a contractor selected by WorldCom to perform the make-ready work. This is nothing more than a demand for preferential treatment that should be rejected.

B. DISCUSSION

Verizon VA will provide WorldCom with the details of make-ready work in a written format (via e-mail) when it presents WorldCom with the make-ready estimate cost. Tr. 2149. According to WorldCom, "that would be sufficient." Tr. 2149. This aspect of the issue therefore appears to be resolved between the Parties by WorldCom's acceptance of Verizon VA's practice. Tr. 2151.

The second part of the issue is WorldCom's proposal that it be permitted to require Verizon VA to employ a contractor selected by WorldCom. Verizon VA schedules make-ready work for itself and all other telecommunications providers and CATV providers on a first come, first served basis. *See* Tr. 2155. WorldCom is proposing to disrupt this established practice. Despite what WorldCom may believe, there are only a limited number of contractors in any area that are qualified to complete make-ready work. Tr. 2156-57. If WorldCom, or any other CLEC, were permitted to go directly to an approved contractor to arrange for its work, contractors might be enticed to postpone other work already scheduled by Verizon VA for other CLECs, CATV providers or even itself, to do work for WorldCom. Tr. 2158. As described by Verizon VA witness Young, "[Verizon VA] can't have WorldCom going out and finding contractors to take away a job to get it done faster and essentially pushing that in front of someone else who may not have that ability" (Tr. 2155), especially since such activity would be virtually undetectable. Tr. 2158-59. As a result, inevitable delays would occur in completing make-ready work for other CLECs, CATV providers and Verizon VA. Verizon VA's current system is administratively efficient and allows Verizon VA to provide non-discriminatory service to all users of Verizon VA's poles, ducts, conduit and rights of way.

There can be no legitimate dispute that, because the network belongs to Verizon VA, all make-ready work must be subject to Verizon VA's supervision. Tr. 2153. WorldCom has agreed in principle to Verizon VA's right to supervise such work, but its proposed contract language is less than clear on this point. Tr. 2154. Accordingly, the Commission should reject WorldCom's ambiguous language and accept Verizon VA's proposed language for this issue.

C. CONTRACT PROPOSALS

1. WorldCom

Framed as an issue of timeliness and costliness of completing make-ready work, WorldCom proposes the following language: "...in the event Licensee presents VZ with a proposal from a contractor who meets VZ's training and safety requirements and is otherwise in good standing with VZ to complete such Make-Ready Work at a cost and/or time that is materially less than that estimated by VZ, VZ agrees to use such contractor to perform the Make-Ready Work in the time frame proposed by said contractor." WorldCom's proposal is unacceptable because it would force Verizon VA to accept the contractor without regard to scheduling or sequencing of other users' activities and could lead to an undisciplined, poorly organized make-ready work system, especially if other users want to adopt a similar self-help system. Moreover, there is simply no provision requiring Verizon VA to approve the contractor. There could be a dispute as to the contractor's qualifications or whether the contractor is in "good standing" with Verizon VA. WorldCom's proposed language therefore unnecessarily raises questions about Verizon VA's ultimate authority to approve or reject the contractor working on its network.

2. Verizon VA

In an attempt to address WorldCom's legitimate concerns on this issue, Verizon VA proposes to add the following language to its proposed license agreement:

§ 8.3: "In the event VZ determines that a Pole, Conduit or Right of Way which Licensee desires to utilize is inadequate or otherwise needs rearrangement, modification or expansion of the existing facilities, structures or property to accommodate Licensee's Facilities, VZ will advise Licensee in writing of the estimated Make-Ready work including charges that would apply to any rearrangements, modifications or expansions that VZ proposes to undertake (Appendix II, Form B-4)."

§ 8.5: "If Licensee presents VZ with a contractor who meets VZ's requirements the contractor will be directed to VZ contract services for consideration."

These provisions guarantee Verizon VA's control over any work done to its network and that WorldCom will receive in writing a description of the charges proposed as part of the make-ready work to be performed. They should therefore be adopted.

Attachment A

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

o An oversize page or document (such as a map) which was too large to be scanned into the ECFS system.

o Microfilm, microform, certain photographs or videotape.

● Other materials which, for one reason or another, could not be scanned into the ECFS system.

The actual document, page(s) or materials may be reviewed by contacting an Information Technician at the FCC Reference Information Center, at 445 12th Street, SW, Washington, DC, Room CY-A257. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician.

For three diskettes see docket number 00-218.